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IN THE

SUPREME COURT OF THE UNITED STATES

No. 624

CHARLIE JOE VAUGHN,
Petitioner

vs.

UNITED STATES OF AMERICA,
Respondent.

Petition For A Writ of Certiorari To The United States Court of Appeals For The Fifth Circuit

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Respondent

Petition For A Writ of Certiorari To The United States Court of Appeals For The Fifth Circuit

Charlie Joe Vaughn prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above stated case on October 27, 1959.

OPINION BELOW

The opinion of the District Court for the Southern District of Georgia (R 108) is not yet reported. The opinion of the Court of Appeals for the Fifth Circuit (R 111) not yet reported, is printed in the Appendix, page 10.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was made and entered on October 27, 1959 (R 112)

and a copy thereof is appended to this petition in the Appendix at page 11. A petition for rehearing was denied on December 3, 1959 (R-119); and a copy of said order is appended to this petition in the Appendix at page 11. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

QUESTION PRESENTED

At the trial of petitioner in the District Court for the Southern District of Georgia petitioner objected to the combining of indictments numbers 14,932; 14,949 (Waycross No. 1242) and 15,123 and the joinder of these indictments into one case for trial.

Petitioner also filed a motion for new trial after being found guilty and convicted of violation of 26 U.S.C. Sections 5686, 5174, 5180, 5681 and 5009.

The District Court ordered the indictments combined at the trial and denied petitioner's motion for new trial.

The Questions Presented are these:

1. Did the District Court in ordering that the indictments be consolidated for trial deprive petitioner of a fair and impartial trial.

2. Did the District Court abuse its discretion in denying petitioner's motion for a new trial.

STATUTES INVOLVED

The statutory laws involved in the Federal Rules of Criminal Procedure. The pertinent portions of these are printed in the Appendix at page 12.

STATEMENT

On the 11th day of February, 1958, petitioners, Charlie Joe Vaughn and Edward Charles Deal, were indicted in the U. S. District Court for the Southern District of Georgia for violation of 26 U.S.C. Section 5686 in that the said Vaughn and Deal did in the County of Tattnall, within the Southern District of Georgia, on or about August 20, 1957, unlawfully, willfully and knowingly possess materials intended for use in violating the Internal Revenue Laws, to-wit: sixty-five (65), one hundred (100) pound bags and twenty five (25), sixty (60) pound bales of Dixie Crystal sugar, which was then and there intended for use in the operation of an illegal distillery for the production of spiritous liquors. (R 3). On the trial of said case your petitioner was found guilty and the said defendant, Edward Charles Deal, was found not guilty.

On the same date petitioner was indicted for violation of U.S.C. Section 5686 in that the said Vaughn did on or about the 2nd day of December, 1957, in the County of Charlton, within the Southern District of Georgia, unlawfully, willfully and knowingly, possess materials intended, for use in violating the Internal Revenue Laws, to-wit: thirty-five (35), Sixty (60) pound bales of Dixie Crystal sugar, which was then and there intended for use in the operation of an illegal distillery for the production of spiritous liquors. (R-73-94).

On the 12th day of November, 1958, petitioners, Charlie Joe Vaughn, and James Billy Dean, were indicted for violation of 26 U.S.C. Section 5174, 5180, 5681 and 5009, said indictment being in different counts, in that on the 28th day of May, 1958 the said Vaughn and James Billy Deal had in their possession and custody, and under their control, a still and distilling apparatus for the production of

spiritous liquors set up without having the same registered as required by law; without having placed conspicuously a sign exhibiting the name and firm of the distiller with the words "Registered Distillery"; unlawfully work in a distillery for the production of spiritous liquors, upon which no sign bearing the words "Registered Distillery" was placed and kept as required by law; and possess distilled spirits, to-wit: ten (10) gallons of non-tax paid whiskey, in five (5) containers, which said immediate containers of said distilled spirits did not have affixed thereto, in such manner as to be broken on opening the said containers, a stamp evidencing the payment of all Internal Revenue taxes of the United States on said distilled spirits contained therein, or indicating compliance with the requirements of applicable statutes; in violation of 26 U.S.C. Section 5008 (R-101, 102, 103).

On Tuesday morning, February 10, 1959, the above three different cases coming on to be, the Assistant United States District Attorney moved the Court to combine the indictments for purpose of trial under Rule 13 of the Rules Governing Criminal Procedure (R-6). After objection by counsel for petitioner (R-7) and argument before the Court (R-7 & 8), the Court granted the motion of the Assistant United States District Attorney and ordered the indictments combined for purpose of the trial. (R-8).

After impaneling of the jury and presentation and argument of the case both by the Government and the petitioner the jury returned a verdict of guilty against your petitioner on each and every indictment, and each and every count of the indictments. (R-4, 94, 103). That upon the jury finding the appellant guilty of each indictment the Court thereupon sentenced the appellant to serve one (1) year imprisonment on Indictment No. 14932 (R-79), one (1) year imprisonment on Indictment No. 14,949, and two (2) years

imprisonment on Indictment No. 15123 all running concurrent with each other (R-104).

On the 10th day of February, 1959, petitioner filed his motion for a new trial to each indictment on the following grounds (1) Because the verdict is contrary to evidence and without the evidence to support it. (2) Because the verdict is decidedly and strongly against the weight of evidence and (3) Because the verdict is contrary to law and principles of justice and equity. (R 81, 98 and 106).

That on the 11th day of May, 1959, the argument on the Motion for New Trial came on to be heard and after hearing arguments by both the attorney for the United States and the petitioner the Court denied the said motions (R 87, 100 and 108).

Petitioner then appealed to the Court of Appeals for the Fifth Circuit. That Court affirmed the District Court (R-112). Its opinion (R-111) shows that it made one holding which was that it found no error in the District Court in the conviction of petitioner.

REASONS FOR GRANTING THE WRIT

The character of reasons for granting the writ as expressed in Rule 19 are presented here, to-wit: the decision of the Fifth Circuit is in conflict with the decision of other Courts of Appeal on the same matter, and the Fifth Circuit has decided a federal question in a way in conflict with applicable decision of this Court. Each of these considerations governing review on certiorari will be specifically treated in that order.

CONFLICTING DECISION BY DIFFERENT COURTS OF APPEAL

On the questions decided by the Court of Appeals for

the Fifth Circuit there is a definite conflict between it and those of other courts of appeals.

First, the decision of the Fifth Circuit Court as to the question of whether the petitioner was denied a fair and impartial trial by the consolidation of the indictments is contrary to the U. S. District Court, Southern District of N. Y. in United States vs. Foster, 80 Fed. Supp. 479 which case held that on the Government's motion to consolidate indictments for conspiracy to organize the Communist Party, the Court was left with a reasonable doubt of the propriety of such consolidation and would therefore resolve such doubt in favor of defendants and deny the motion in order to insure defendants of a fair and impartial trial.

The 8th Circuit Court of Appeals in Brown, et al vs. United States, 113 Fed. 69, and the 8th Circuit Court of Appeals in Dalon, et al vs. United States, 133 Fed. 440 held "It must be kept in mind however, that even where the indictments are such that they could be joined as separate counts in one indictment as provided for by the statute authorizing joinder of counts the Court may and should refuse a consolidation pursuant to the clause in the statute reading 'which may be properly joined' where the permitting of a consolidation would prevent a fair trial or be unjust to defendant."

The 2nd Circuit Court of Appeals in the case of Max Schaffer, et al vs. United States, 266 Fed 435, 440 went into the question of the prejudice of the rights of the accused to a fair trial by the joinder of indictments of different transactions and determined that if the accused was so prejudiced the District Court had committed error by so consolidating.

The decision of the Fifth Circuit in the present controversy is clearly in conflict with the decision of the above

Circuit Courts. Clearly the record shows that the petitioner was prejudiced by the consolidation of the indictments of offenses that were committed months apart and even though were related in their nature as to the types of offenses they were not even remotely related in the acts charging the violation of these offenses.

Decision of other Circuit Courts that have any similiarity to the decision of the Fifth Circuit in this case had factual situations different from the instant case. In these cases the offenses of the various indictments were all related or interwoven. By that they were a series of transactions that took place within a reasonable time of each other and all were of a similar nature to create in essence a single pattern. In the instant case the offenses were not even the remotest related and certainly was not such a nature as to create a single pattern of crime.

In the instant case one important factor exists to plainly show that the petitioner was prejudiced by consolidating the indictments and that was that one of the accused in indictment number 14,932 was found not guilty on the same evidence that your petitioner was found guilty on. As to that accused he was not charged in the other two indictments and the evidence of the remaining indictments was not used against him. This fact above shows that the petitioner was prejudiced by the joinder of the indictments and the Fifth Circuit Court of Appeals should have applied the cases of United States vs. Foster, supra, United States vs. Brown, supra, United States vs. Dalon supra and United States vs. Max Schaffer supra.

ORDER DENYING PETITIONER'S MOTION FOR A NEW TRIAL

The decision of the Fifth Circuit Court of Appeals in sustaining the judgment of the District Court is contrary

to the 4th Circuit Court of Appeals in the case of United States vs. Gadette, 109 F2d 331.

In the instant case the only evidence introduced to convict your petitioner of indictments 14,923 and 14,919 possession of sugar for illegal purposes, was the testimony that petitioner was apprehended with so many pounds of sugar in his possession. In the Gadette case supra the 4th Circuit held that the conviction was proper due to the fact that there was evidence to show that the possession of the sugar by the defendant was under unusual circumstances, that the person in whose name the sugar was billed testified that it did not belong to him, that the defendant had made previous purchases of sugar from him, and that sugar had been used in the neighborhood for the illegal manufacture of liquor. This circumstantial evidence is clearly absent in the present controversy and from the evidence it cannot be said that the defendant is guilty beyond a reasonable doubt.

This Court should for the reasons above grant the writ

DECISION OF THE FIFTH CIRCUIT IN CONFLICT WITH APPLICABLE DECISION OF THIS COURT

The decision of the Fifth Circuit is clearly in conflict with the decision of this Court in the case of United States vs. Georgia McElroy et al, 161 U.S. 76, 41 Led 355 which case held: "A conviction will be reversed for improper consolidation of indictments with others for different transactions, although the record does not show that defendants were thereby prejudiced or embarrassed in their defense, where it cannot be said that they may not have been embarrassed and prejudiced or that the attention of the jury may not have been distracted to their injury in passing upon the distinct and independent transaction.

The record clearly indicates for the reasons set forth previously in this brief that the petitioner was prejudiced by the consolidation of the indictments and the Circuit Court's opinion in affirming the decision of the District Court is in conflict with the above decision of this Court and for this reason certiorari should be granted.

CONCLUSION

For the reasons set forth above it is respectfully submitted that this petition for a writ of certiorari should be granted.

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OPINION

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 17817

CHARLIE JOE VAUGHN,
Appellant,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal From The United States District Court For The Southern District of Georgia.

(October 27, 1959.)

Before RIVES, Chief Judge, and TUTTLE and BROWN, Circuit Judges.

PER CURIAM: We find no error in the judgment of conviction of appellant. The judgment is AFFIRMED.

JUDGMENT

EXTRACT FROM THE MINUTES OF OCTOBER 27, 1959

CHARLIE JOE VAUGHN,

No. 17817.

versus

UNITED STATES OF AMERICA.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Georgia, and was taken under submission by the Court upon the record and briefs on file;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

ORDER DENYING REHEARING

EXTRACT FROM THE MINUTES OF DECEMBER 3, 1959

CHARLIE JOE VAUGHN,

No. 17817.

versus

UNITED STATES OF AMERICA.

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

Rule 8 Federal Rules of Criminal Procedure

Rule 8. Joinder of offenses and of defendants—(a) Joinder of offense—Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similiar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Joinder of defendants—Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

Rule 13 Federal Rules of Criminal Procedure

Rule 13. Trial together of indictments or informations

The Court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.

Rule 14 Federal Rules of Criminal Procedure

Rule 14. Relief from prejudicial joinder.

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has on this date served a true copy of the foregoing petition, brief and record on the United States Government by mailing same to the Solicitor General for the United States at his office in Washington, D. C. and to the District Attorney for the Southern District of Georgia at his office in the Post Office in Savannah, Georgia with postage affixed to insure delivery.

This day of December, 1959.

RALPH L. CRAWFORD